

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 1:20-CV-00954**

FARHAD AZIMA,

Plaintiff,

v.

NICHOLAS DEL ROSSO and VITAL
MANAGEMENT SERVICES, INC.,

Defendants.

**PLAINTIFF’S REPLY RELATED
TO ITS NOTICE OF
SUPPLEMENTAL AUTHORITY**

In filing their Response (Docket No. 50) to Plaintiff Farhad Azima’s Notice of Supplemental Authority (Docket No. 49), Defendants concede the relevance of the subsequent authority provided by Mr. Azima and concede that Mr. Azima’s Complaint should not be dismissed because of preclusion. Defendants’ response should have ended there. Instead, Defendants spend the vast majority of their Response repeating arguments that they have previously made in the filings related to their Motion to Dismiss and other matters before the Court. None of those arguments concern the subsequent authority. Such arguments are inappropriate in a response to a Notice of Subsequent Authority and the Court should disregard them.

“[A] suggestion of subsequent pertinent and significant authorities may be filed at any time prior to the Court's ruling and shall contain only the citation to the case relied upon, if published, or a copy of the opinion if the case is unpublished.” LR 7.3(i). “[T]he purpose for filing a notice of supplemental authority is to alert the court to case law that

was unavailable to the parties when making a previous filing, but is relevant to the court's consideration on the matter.” *Ashghari-Kamrani v. United Services Auto. Ass’n*, Civil Action No. 2:15-cv-478, 2016 WL 8253884 (E.D. Va. Mar. 18, 2016). In the context of a Notice of Supplemental Authority, making additional arguments or repeating arguments already made in other filings is improper. *See, e.g., Legal Sea Foods, LLC v. Strathmore Ins. Co.*, ___ F. Supp. 3d ___, ___, Civil Action No. 20-10850-NMG, 2021 WL 372453, *1 (D. Mass. Feb. 3, 2021) (“Several courts have held that it is improper for a notice to include legal argument accompanying the cited authority.”) (citations omitted); *Myers v. Freed*, No. CV-19-05683-PHX-SMB, 2020 WL 6048327, *1 (D. Ariz. Oct. 13, 2020) (citation omitted) (“[A] Notice of Supplemental Authority is . . . not a venue for submission of additional argument or factual evidence.”); *see also, e.g., Hodges v. School Bd. of Orange Cty., Fla.*, No. 6:11-cv-135-Orl-36GJK., 2012 WL 5457427, *4 n.5 (M.D. Fla. Nov. 8, 2012) (noting that parties cannot raise new arguments in connection with notice of supplemental authority or otherwise file additional replies without leave of court under local rules). Defendants’ rehashed arguments from their previous filings are meritless, but because they are inappropriate in this posture, Plaintiff does not intend to respond and instead respectfully requests that the Court disregard them.

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This, the 26th day of March, 2021.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I certify under Local Rule 7.3(d)(1) that the body of this brief, headings, and footnotes together contain 3,125 words or fewer, as reported by the word count feature in Microsoft Word 2016.

This, the 26th day of March, 2021.

/s/ Ripley Rand

Ripley Rand

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Plaintiff's Reply In Support of Notice of Supplemental Authority with the Clerk of Court using the CM/ECF system, which will send electronic notification of this Notice to the following attorneys:

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